# No. 15,618

IN THE

# United States Court of Appeals

## For the Ninth Circuit

RICHARD D. LEUSCHNER,
*Appellant,*

vs.

FIRST WESTERN BANK AND TRUST COMPANY, a California Banking Corporation, and UNITED STATES OF AMERICA,
*Appellees.*

**On Appeal from the Judgment of the United States District Court for the Northern District of California.**

## BRIEF FOR THE UNITED STATES.


CHARLES K. RICE,
Assistant Attorney General.
LEE A. JACKSON,
A. F. PRESCOTT,
ARTHUR I. GOULD,
Attorneys, Department of Justice,
Washington 25, D. C.

LLOYD H. BURKE,
United States Attorney.
LYNN J. GILLARD,
Assistant United States Attorney.

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### OPINION BELOW.

The opinion of the District Court (R. 75-80) is not officially reported.

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### JURISDICTION.

This appeal involves federal income taxes. The case was initiated by the taxpayer suing the trustees, one of which was the First Western Bank and Trust Company, in the Superior Court of the State of Califor-

nia, for funds claimed from the trust as a beneficiary. (R. 299-325.) The First Western Bank and Trust Company filed a cross-complaint interpleading the United States. (R. 49-52.) The United States petitioned for removal of the cause from the state court to the District Court of the United States. (R. 46-47.) Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1444. The judgment was entered on March 28, 1957. (R. 81-82.) Within sixty days and on April 26, 1957, a notice of appeal was filed. (R. 83.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

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## QUESTIONS PRESENTED.

1. Whether the District Court correctly held that the right of the United States to collect unpaid income taxes prevails over spendthrift provisions of a trust and any law of the State of California exempting a portion of the beneficiaries' rights thereunder.

2. Whether the District Court correctly held that neither the doctrine of *res judicata* nor estoppel is applicable to the case at bar, in that the question involved in this proceeding had never previously been decided in a judicial proceeding between the taxpayer and the United States.

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## STATUTES INVOLVED.

The pertinent provisions of the statutes involved are set forth in the Appendix, *infra*.

## STATEMENT.

The taxpayer was both one of the trustees and beneficiaries of a spendthrift trust created by his mother. The First Western Bank and Trust Company, one of the trustees of this trust, was the depository of the income from the trust. (R. 77.) This case originated as a suit by the taxpayer against his co-trustees in the California Superior Court for payment of moneys due him as a beneficiary of the trust. (R. 299.)[1] The trustee bank interpleaded the United States as a cross-defendant. (R. 49-52.) The United States petitioned for removal of the cause to the Federal District Court (R. 46-47) and therein objected to being sued in an interpleader action (R. 61-64), which objection was denied (R. 68-69).

The United States sued the First Western Bank and Trust Company under the penalty provision of Section 6322(b) of the Internal Revenue Code of 1954 for failure to turn over any funds belonging to the taxpayer from the trust fund in question. (R. 3-5.) The two causes of action were consolidated by the District Court. (R. 68-69.)

The court below set out the claim of the United States for taxes as follows (R. 76):

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[1]Certain facts of record have been included in the statement in this brief although they were not findings of fact as listed by the District Court. It is felt by the United States that these additional facts will be of assistance to this Court.

| Nature of Tax and Period | Date of Assessment | Assessment Lists Received | Amount of Assessment | Amount Paid | Notice of Tax Lien Filed | Un i... Bal...e |
|---|---|---|---|---|---|---|
| Income 1943 | 1/4/52 | 1/ 7/52 | $62,979.84 | 0 | 6/ 6/52 7/21/52 | $62,9... |
| Income 1944 | 1/4/52 | 1/ 7/52 | 66,273.27 | 0 | 6/ 6/52 7/21/52 | 66,... |
| Income 1945 | 1/4/52 | 1/ 7/52 | 31,133.54 | 0 | 6/ 6/52 7/21/52 | 31,... |
| Income | 2/8/52 | 2/11/52 | 13,783.74 | 2,477.21 | 8/ 7/52 | 11,... |

The lower court found that subsequent to a notice of levy prepared by the United States and delivered to the bank on July 22, 1955, the bank had made no payments from the trust funds in question to the taxpayer. (R. 76-77.) The court further "found" that the bank was not subject to the penalty provisions of Section 6332(b); that the United States did not state a claim for foreclosure of its lien; and that the trustees who interpleaded the United States were entitled to attorney fees. (R. 78-79.) None of these findings has been appealed to this Court by the United States.

The District Court did "find" however, that the United States had a right to collect unpaid income taxes from the taxpayer and that this right would prevail over the spendthrift provisions of the trust and Section 859 of the Civil Code of the State of California. (R. 78-79.) Accordingly, the District Court's conclusion of law dismissed the complaint initiated by the taxpayer. (R. 79.) It is from this judgment (R. 81) that taxpayer has appealed. (R. 83.) The questions presented to this Court arise solely from this aspect of the lower court proceeding. (R. 333-334.)

## SUMMARY OF ARGUMENT.

All decisions involving spendthrift trusts, the specific issue here, hold that spendthrift provisions of a trust, and provisions of state law exempting a beneficiary's interest in the trust, are ineffectual against the United States. The California statute which provides that the beneficiary's income under a trust "beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of * * * [his creditors]", is clearly an exemption statute. It is well settled that a state exemption statute can not be asserted against the United States. The California statute here is no different from a state statute exempting homesteads, which uniformly have been held inapplicable to the United States.

The authorities cited by the taxpayer are not in point. They involve property rights. Here, there is no question of the taxpayer's property rights. The taxpayer not only admits, but asserts, that the fund involved is his property. A federal lien attaches to all property and rights to property of a taxpayer; and is not extinguished by taxpayer's bankruptcy proceedings.

The doctrine of *res judicata* requires a subsequent writ for the same cause of action. If the related concept of collateral estoppel is to be invoked there must be a prior judgment on the same issue that is being subsequently litigated in addition to identity of parties in the subsequent suit. A prior decision by a ref-

eree in bankruptcy denying a claim of the bankruptcy trustee for possession of the income from the spendthrift trust in no way bars the United States in this proceeding. The trustee proceeded on a legal theory that in no way relates to the question of whether a spendthrift trust provision can prevent the United States from satisfying its tax lien from the trust income. Further, the trustee does not represent lien creditors but in effect is contesting issues with the lien creditors. An analysis of the bankruptcy situation clearly shows that the trustee was acting for the general creditors and his position was opposed to the interest of the United States.

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## ARGUMENT.

### I.

### THE DISTRICT COURT CORRECTLY HELD THAT THE RIGHT OF THE UNITED STATES OF AMERICA TO COLLECT UNPAID INCOME TAXES PREVAILS OVER SPENDTHRIFT PROVISIONS OF A TRUST OR ANY OTHER SUMS ALLOWED A BENEFICIARY UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Taxpayer argues that the lien of the United States for unpaid taxes owed by taxpayer is subordinate to the terms of the spendthrift trust pertaining to income to be paid the beneficiary and the laws of the local jurisdiction recognizing these provisions. (Br. 6-25.) The United States contends that it is a well accepted principle that spendthrift trust provisions preventing the beneficiary from alienating his interest or subjecting his interest to the claims of creditors

are ineffectual as to claims of the United States against the beneficiary.

The pertinent provisions of the trust agreement in question pertaining to the creation of the spendthrift trust read as follows (R. 315-316):

> (f) Each and every beneficiary under this trust is hereby restrained from and shall be without right, power or authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate or in any other manner affect or impair his, her or their beneficial and legal rights, titles, interests, and estates in and to the income and/or principal of this trust during the entire term hereof; nor shall the rights, titles, interests and estates of any beneficiary hereunder be subject to the rights or claims of creditors of any beneficiary, and all the income and/or principal of this trust shall be transferable, payable and deliverable solely to the beneficiaries as herein provided, and the Trustees may require the personal receipt of any beneficiary as a condition precedent to the payment of any money or other property to such beneficiary.

It can easily be seen that the trustor created a trust containing the usual spendthrift provisions. The laws of the local jurisdiction, California, qualifiedly recognize spendthrift trusts.

As indicated by taxpayer in his brief, California does permit a trust provision restraining alienation by the beneficiary. (Br. 6.) Section 867, California Civil Code, Appendix, *infra*. However, this provision is limited in regard to the claims of creditors. Under

Section 859 of the Civil Code of California, Appendix, *infra,* ordinary creditors can reach all income of the beneficiary except that necessary for his education and support. *Canfield v. Security First Nat. Bank,* 13 Cal. 2d 1, 87 P. 2d 830. The specific language of Section 859 states:

> Where a trust is created to receive the rents and profits of real or personal property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such persons, in the same manner as personal property which cannot be reached by execution.

It is obvious that mere labels will not be dispositive of the issue at bar. Numerous cases have held that state statutes and spendthrift trust provisions that exempt, limit, or exclude income from the claims of creditors are ineffectual as to the tax claim of the limited states.

A leading case on the specific question before this Court is *In Re Rosenberg's Will,* 269 N.Y. 247, 199 N.E. 296, certiorari denied, *sub nom. Rosenberg v. United States,* 298 U.S. 669. The New York statutes permitted creations of spendthrift trusts; however, beneficiaries were limited to income need for support and then only to ninety per cent of the trust income payable, the remaining income being subject to the claims of creditors. The question presented to the court was whether the United States could prevail

over the interest of the spendthrift as derived from the New York statutes.[2] The court in answering this contention stated (199 N.E. 207):

> The fundamental policy to be borne in mind is that the right of property is a right *cum onere*. A person may not ordinarily have ownership of or right to enjoy property and at the same time be able to keep it from the claims of creditors and others. Cf. *Hallett v. Thompson,* 5 Paige, 583, 586. An individualistic cross-current came to permit fathers of improvident sons, by way of exception, to insure a sum necessary for education and support (Real Property Law, § 98) in order to protect them from their own extravagance and to prevent them from becoming public charges. Nevertheless, under the pressure of special circumstances, that apparently unreachable sum had been permitted by the courts to be reached. *Wetmore v. Wetmore,* 149 N.Y. 520, 44 N.E. 169, 33 L.R.A. 708, 52 Am. St. Rep. 752, and see 43 Harvard Law Rev. 63. It is by no means certain that our state policy excludes the payment of state taxes and other possible claims by the state from the category of necessary support. A tax in some form nowadays is at least as certain as, say medical or legal expenses.
>
> However that may be, it is certain that no policy of this state may interfere with the power of Congress to levy and collect taxes on income. *Burnet v. Harmel,* 287 U.S. 103, 110, 55 S. Ct. 74, 77

[2]The case stated that the lien of the United States was filed subsequent to the lien of other creditors; therefore, the other creditors were entitled to the provision granting ten percent of trust income to creditors. 199 N.E. 208.

L. Ed. 199; *United States v. Snyder,* 149 U.S. 210, 214, 13 S. Ct. 846, 37 L. Ed. 705. Cases where state exemptions have been applied to the collection of judgments in favor of the United States have been in every instance predicated on the statutory adoption of state exemptions. *Fink v. O'Neil,* 106 U.S. 272, 1 S. Ct. 325, 27 L. Ed. 196; *Custer v. McCutcheon,* 283 U.S. 514, 51 S. Ct. 530, 75 L. Ed. 1239.

And cf. *Aquilino v. United States,* decided December 12, 1957 (1958 C.C.H. # 9191), a recent decision of the Court of Appeals of New York in which the Court stated: "It is, by now, exceedingly well settled that no state-created rule may defeat the paramount right of the United States to levy and collect taxes uniformly throughout the land."

It is clear that the *Rosenberg* case is directly in point. The case gains added significance when it is recognized that the California statute concerning this matter was adopted from a statute of the State of New York—the jurisdiction that decided *Rosenberg. Canfield v. Security-First Nat. Bank, supra,* p. 14.

Taxpayer attempts to distinguish the *Rosenberg* case by stating that the court was faced with the alternative of deciding the case as it did or exempting ninety per cent of the funds derived from the spendthrift trust. Obviously this attempted distinction fails for the question there as here was whether a spendthrift trust provision can prevail over the lien of the United States. It was directly held that it could not.

It also is completely contrived in that there is no allusion in the decision whatsoever that the Court was concerned with this "alternative." (Br. 20-21.)

That the creation of a spendthrift trust will not defeat a claim of the United States against the beneficiary is not limited to the aforementioned decision. It has been recognized and followed by all other decisions of which we are aware. *United States v. Dallas Nat. Bank,* 152 F. 2d 582 (C.A. 5th); *United States v. Canfield,* 29 F. Supp. 734 (S.D. Cal.), appeal dismissed, *sub nom. Security-First National Bank v. United States,* 113 F. 2d 491 (C.A. 9th); *Mercantile Trust Co. v. Hofferbert,* 58 F. Supp. 701 (Md.); *United States v. Mercantile Trust Co.,* 62 F. Supp. 837 (Md.); *United States v. City of Greenville,* 118 F. 2d 963, 965 (C.A. 4th); Restatement of Trusts (1948 Supp.) §157(d); Scott, Trusts (1948 Supp.) §157.4; Griswold, Spendthrift Trusts (2d ed., 1947), §§342, 345.

In *United States v. Canfield, supra,* the court stated (p. 736):

> It has been unquestionably settled that Canfield at all times involved in this action had an interest in the income of the trust created and vested by his father's will. And it can no longer be disputed that Canfield's right to receive income from the trust was and is property or a right to property belonging to Canfield, which was reachable by the United States in satisfaction of the government's unpaid tax claim under Section 1610. 26 U.S.C.A. *Canfield et al. v. Security-First National Bank, supra, Matter of Rosenberg's Will, supra.*

> We also find from the record before us that the government's right and lien upon Charles O. Canfield's portion of the income from the testamentary spendthrift trust is and has been at all times paramount and preferential to the rights or claims of all other defendants herein.

In *Mercantile Trust Co. v. Hofferbert, supra,* p. 705:

> The reasons which have actuated some courts, as in Maryland, to uphold spendthrift trusts against the claims of creditors do not necessarily apply to tax claims of the government either federal or state. *Griswold, supra,* § 342, p. 302. The public policy involved is quite different. In the one case the doner of the property has the right to protect the beneficiary against his own voluntary improvident or financial misfortune; but in the other the public interest is directly affected with respect to collection of taxes for the support of the government. The imposition of the tax burden is not voluntary by the beneficiary. In a sense the property itself incurs the tax; or rather the property is held *cum onere.*

The statute involved here is no different from the state statutes which exempt homesteads. It is well settled that such statutes may not defeat the Government's collection of taxes. The Government has its own exemption statute, Section 6334 of the Internal Revenue Code of 1954. Such a statute, enacted to effectuate constitutional power, is the supreme law of the land. If it is in conflict with state law, constitutional or statutory, the latter must yield. See *Sham-*

*baugh v. Scofield,* 132 F. 2d 345 (C. A. 5th); *United States v. Greenville,* 118 F. 2d 963, 965 (C. A. 4th); *Jones v. Kemp,* 144 F. 2d 478 (C. A. 10th), and the cases cited therein.

*Blair v. Commissioner,* 300 U. S. 5; *Uterhart v. United States,* 240 U. S. 598; *Spindle v. Shreve,* 111 U. S. 542; *United States v. Winnett,* 165 F. 2d 149 (C. A. 9th) cited by the taxpayer are not applicable here. None of these cases, nor any other relied upon by the taxpayer, relate in any way to an authorization of a state provision defeating a tax lien of the United States by reason of declaring that certain funds of the debtor are free from claims of his creditors.

Here, there is no question of the rights of third parties. It is clear that the Government seeks to collect from property of the taxpayer. In this very suit the taxpayer is claiming, not only that he is entitled to the fund interpleaded, but also that he is entitled to monthly payments "during each month of the existence of said trust." (R. 300-301.)

## II.

**THE QUESTION PRESENTED FOR THIS PROCEEDING HAD NEVER BEEN PREVIOUSLY DECIDED IN A JUDICIAL PROCEEDING INVOLVING THE TAXPAYER AND THE UNITED STATES. THE DISTRICT COURT CORRECTLY DECIDED THAT NEITHER THE DOCTRINE OF RES JUDICATA NOR ESTOPPEL IS APPLICABLE AS TO THE CASE AT BAR.**

Taxpayer asserts in his brief that the instant question regarding a spendthrift trust defeating the claim of the United States had been decided in a prior bankruptcy proceeding. (Br. 25-40.) The District Court prepared no written findings of fact nor conclusions of law as to this specific matter; however, it did consider this question during the trial itself. (R. 75-80, 257-260.) The court orally decided that the issue presented in the bankruptcy proceeding involved an entirely different issue than the question presented by the then present case. (R. 257-260.)

A review of the facts of the case and law concerning this area unquestionably supports the District Court's decision. It is obvious from the case record that the District Judge decided the question of whether a trustee in bankruptcy can take the income of a spendthrift trust for the benefit of the creditors, but that decision can be of no concern to the question of whether the United States can prevail against a spendthrift trust in a suit to enforce its lien under the Internal Revenue Code. (R. 257-259.) It must be noted that the Federal Bankruptcy Act, although created by Acts of Congress, nevertheless recognizes state exemptions for the benefit of the Bankrupt.[3] Sec.

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[3]However, tax claims are not extinguished by bankruptcy. See Section 6873 of the 1954 Internal Revenue Code.

6, Appendix, *infra*. *Hanover National Bank v. Moyses,* 186 U. S. 181; *Turner v. Bovee,* 92 F. 2d 791 (C. A. 9th); *Burns v. Kinzer,* 161 F. 2d 806 (C. A. 6th); *In re Johnson,* 97 F. Supp. 779 (S. D. Cal.), reversed on other grounds, 195 F. 2d 717. The trustee in bankruptcy can obtain only the interest in the bankrupt's estate that the bankrupt possessed as of the date of bankruptcy as determined by the local law. *Zartman v. First National Bank,* 216 U. S. 134; *Schultz v. England,* 106 F. 2d 764 (C.A. 9th); *Martin v. New York Life Ins. Co.,* 104 F. 2d 573 (C. A. 7th), certiorari denied, 308 U. S. 594. The cases have held that the interest of a beneficiary of a spendthrift trust cannot be reached by the trustee in bankruptcy since the bankrupt-beneficiary did not have the power to alienate or encumber the interest. *Eaton v. Boston Trust Co.,* 240 U. S. 427; *Ashton v. Sentney,* 145 F. 2d 719 (C. A. 9th); *Rountree v. Land,* 155 F. 2d 471 (C. A. 4th); *Danning v. Lederer,* 232 F. 2d 610 (C. A. 7th); *Jones v. Harrison,* 7 F. 2d 461 (C. A. 8th), certiorari denied, 270 U. S. 652. Clearly, the question of whether a trustee in bankruptcy can reach the interest of a bankrupt beneficiary of a spendthrift trust is an entirely different question than whether a spendthrift trust provided by state law can defeat a claim of the United States for a tax lien. *Mercantile Trust Co. v. Hofferbert, supra,* p. 704. A different cause of action was presented in the bankruptcy proceeding than the present cause of action. Consequently, there is no basis for an assertion for the defense of *res judicata* nor could a claim of collateral estoppel succeed.

As is evident from the exhibits introduced in the trial court by the taxpayer, the trustee in bankruptcy though overruled by the referee, denied the exemption requested by the bankrupt (the taxpayer in the instant case). (Ex. C; R. 183.) The brief filed by the trustee in bankruptcy before the referee in bankruptcy conclusively shows that the trustee denied the claim of the bankrupt for a reason that is certainly not in issue in this instant proceeding. The bankruptcy trustee's brief states (Ex. D, p. 6):

> It is extremely important to note that the trustee has no discretion in the administration of the trust to withholding or modifying or postponing the amounts payable to the beneficiary according to the formula as determined in the trust agreement. The amounts as determined in the agreement must be paid by the trustee every month. Accordingly, since the bankrupt as of the time of the filing of the Petition could have made an assignment of part of his interest effective as to amounts when they became accrued and payable, the interest in the trust was transferable to that extent and passed to the trustee, and further, the bankrupt had a power with respect to his interest in the trust as to such amounts which he could have assigned for his own benefit which similarly passed to the Trustee in Bankruptcy and which the Trustee can exercise during the pendency of these proceedings.

Nowhere in the brief of the trustee in bankruptcy is the legal position of the United States mentioned. The argument relied upon by the United States in

the court below and in this Court was never discussed by either the bankruptcy trustee or referee. The issue presented therein is not and has never been relied upon by the United States. The referee in bankruptcy decided only the question urged by the trustee in bankruptcy in his capacity of representing the general creditors. (Ex. C.)

It is difficult to perceive how an argument could be made by the taxpayers that the trustee in bankruptcy was representing the United States in the bankruptcy proceeding. The United States' claim for unpaid taxes became tax liens long before the bankruptcy proceeding commenced. (R. 76.) Consequently, the United States was not a general creditor nor a priority creditor under Section 64 of the Bankruptcy Act[4] but rather a lienholder under Section 67 (Appendix, *infra.*) Under the latter statute, the lienholder occupies a position antagonistic to the general creditors as represented by the trustee. *Small-Ferrer v. Ware,* 68 F. 2d 366 (C. A. 4th); *Matney v. Combs,* 171 Va. 244, 198 S. E. 469. The assets obtained by the lienholders are obviously never available for distri-

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[4]We are well aware that the petition in bankruptcy was filed (July 6, 1955) prior to the date the levy was made upon the trustee-bank (July 22, 1955); and that as to personal property of a bankrupt which a trustee in bankruptcy is entitled to take over, a statutory lien thereon unless accompanied by possession is subordinated to administrative expenses and certain wage claims under Section 104. However, we submit that where, as here, the trustee is not entitled to take property, but the United States is so entitled, its lien is not subjected to the provisions of Section 104; that in such circumstances the rights of the United States are the same as though the taxpayer had not taken bankruptcy.

bution to trustee for the priority or general creditors. In the bankruptcy proceeding in question the trustee was attempting to obtain property that would be available for all the creditors. If he had prevailed, he would not only have defeated the claim of the bankrupt taxpayer but also affected adversely the rights of the United States in an asset available to satisfy the claim of the United States, who prior to trustee's denial of exemption had subjected the spendthrift trust income to levy for satisfaction of its tax lien. Hence, in fact the ruling in the bankruptcy proceeding was favorable to the United States.

Taxpayer's assertion that the United States should be barred by the doctrine of *res judicata* from contesting the instant question is without merit. The cause of action herein bears no relation to the cause of action involved in the bankruptcy suit. The issue presented in this suit is far different from the issue present in the bankruptcy proceeding. The United States as a lienholder cannot be deemed to be in privity with the trustee in bankruptcy who was prosecuting a cause of action that would be against the interest of the United States. Clearly, neither the doctrine of *res judicata* nor collateral estoppel are applicable to the present cause. *Commissioner v. Sunnen,* 333 U. S. 591.

## CONCLUSION.

For the reasons above-stated, the judgment of the District Court is correct and should be affirmed.

Respectfully submitted,

CHARLES K. RICE,
Assistant Attorney General.
LEE A. JACKSON,
A. F. PRESCOTT,
ARTHUR I. GOULD,
Attorneys, Department of Justice,

LLOYD H. BURKE,
United States Attorney.
LYNN J. GILLARD,
Assistant United States Attorney.

February, 1958.

**(Appendix Follows.)**

# Appendix.

## Appendix

*Internal Revenue Code of 1954*:

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Supp. II, Sec. 6321.)

*Bankruptcy Act,* c. 541, 30 Stat. 544:

SEC. 6. [as amended by Sec. 1, Act of June 22, 1938, c. 575, 52 Stat. 840]. EXEMPTIONS OF BANKRUPTS.

This title shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State: *Provided, however,* That no such allowance shall be made out of the property which a bankrupt transferred or concealed and which is recovered or the transfer of which is avoided under this title for the benefit of the estate, except that, where the voided transfer was made by way of security only and the property recovered is in excess of the amount

secured thereby, such allowance may be made out of such excess.

(11 U.S.C. 1952 ed., Sec. 24.)

SEC. 64 [as amended by Sec. 1, Act of June 22, 1938, *supra*]. DEBTS WHICH HAVE PRIORITY.

(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be * * * (4) taxes legally due and owing by the bankrupt to the United States or any state or any subdivision thereof: *Provided,* That no order shall be made for the payment of a tax assessed against the property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And provided further,* That in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and * * * .

* * * * * * *

(11 U.S.C. 1952 ed., Sec. 104.)

SEC. 67. [as amended by Sec. 1, Act of June 22, 1938, *supra*]. LIENS AND FRAUDULENT TRANSFERS.

* * * * * * *

(b) The provisions of section 96 of this title to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or to any State or any subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the

trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition initiating a proceeding under this title by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

* * * * * * *

(11 U.S.C. 1952 ed., Sec. 107.)

*California Civil Code*:

SEC. 859. [*Rents and profits liable to creditors in certain cases.*]

Where a trust is created to receive the rents and profits of real or personal property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such persons, in the same manner as personal property which cannot be reached by execution.

SEC. 867. [Restraining disposition of trusts.] The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust.